



MARKET CONDUCT EXAMINATION REPORT
Dated July 24, 2012

**COVERING THE TIME PERIOD OF JULY 1, 2010 THROUGH JUNE 30,
2011**

STEWART TITLE GUARANTY COMPANY

**P.O. Box 2029
Houston, Texas 77252**

**NAIC Company Code 50121
NAIC Group Code 340**



CONDUCTED BY:

COLORADO DIVISION OF INSURANCE

**STEWART TITLE GUARANTY COMPANY
P.O. Box 2029
Houston, Texas 77252**

**MARKET CONDUCT EXAMINATION REPORT
DATED MONTH XX, 2012
COVERING THE TIME PERIOD OF JULY 1, 2010 THROUGH JUNE 30, 2011**

Examination Performed by:

Division of Insurance Market Conduct Examiners

**Christine M. Nelson
Market Conduct Examiner**

And

**Jeffory A. Olson, CIE, MCM, FLMI, AIRC, ALHC
Examiner-in-Charge**

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COMPANY PROFILE

The following is taken in part from written documentation provided by Stewart Title Guaranty Company and has not been independently verified by the Division of Insurance:

Stewart Title Guaranty Company (the Company) is a wholly owned subsidiary of Stewart Information Services Corporation (SISCO), an insurance holding company domiciled in the State of Delaware. The Company is a title insurance underwriter domiciled in the State of Texas and insures title policies written directly or by its independent or affiliated agents, wholly or partially owned by Stewart Title Company.

The Company's history dates back to the late 1800's in Texas. In 1893, Maco Stewart purchased the Gulf City Abstract Company in Galveston and began issuing abstracts from the Stewart Law and Land Title Office. He incorporated Stewart Title Guaranty Company (STG) in 1908.

In 1970, Stewart Information Services Corporation (SISCO) was formed as a holding company so new business opportunities in the real estate information area could be pursued. With Stewart Title Guarantee Company as its principle subsidiary, SISCO held an initial public offering of its stock in March 1972 and began trading on the NASDAQ.

By 1975, the Company had grown to 400 issuing offices operating in twenty-five states and the District of Columbia.

In 2010, Stewart underwriters Arkansas Title Insurance Company, National Land Title Insurance Company and Stewart Title Insurance Company of Oregon were merged with Stewart Title Guaranty Company.

Stewart Title Guaranty Company was licensed for business in the State of Colorado in 1977.

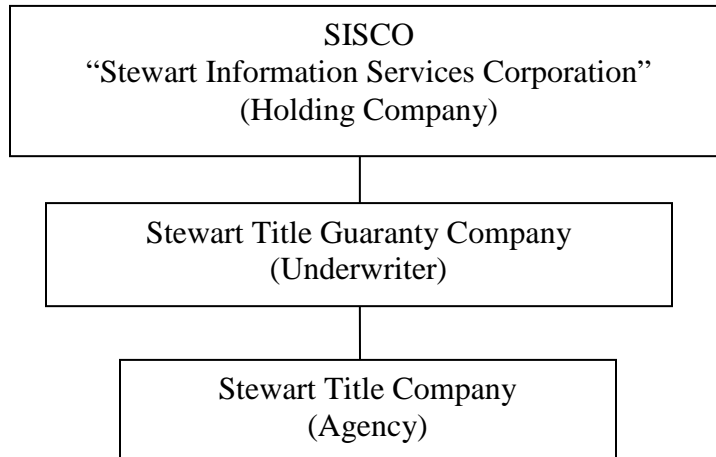
Premium and Market Share in Colorado as of December 31, 2010*:

Total Written Premium:	\$40,462,000
Market Share:	16.91%
Loss Ratio:	.061%

*As shown in the 2010 Edition of the Colorado Insurance Industry Statistical Report

A.M. Best has currently assigned a Financial Strength Rating to Stewart of B⁺⁺.

The Company provided the following organization chart:



PURPOSE AND SCOPE

State market conduct examiners, with the Division of Insurance (“Division”), reviewed certain business practices of Stewart Title Guaranty Company (“Stewart” or “Company”). This market conduct examination (“MCE”) was conducted in accordance with Colorado insurance laws §§ 10-1-201, 10-1-203, 10-1-204, 10-1-205 and 10-3-1106, C.R.S., which empower the Commissioner of Insurance (“Commissioner”) to examine any entity engaged in the business of insurance. All work product developed in producing this report is the sole property of the Division.

The purpose of this examination was to determine Stewart’s compliance with Colorado insurance laws related to title insurance business in Colorado. Examination information contained in this report will serve only this purpose, except as provided by law pursuant to §§ 10-1-204 and 10-1-205, C.R.S. The findings and conclusions, including the Final Agency Order, arising out of this examination shall be a public record.

The examiners conducted the examination in accordance with procedures developed by the Division, which are based on model procedures developed by the National Association of Insurance Commissioners (“NAIC”). The examiners relied primarily on records and materials maintained and/or supplied by Stewart and its agents. This market conduct examination covered the period from July 1, 2010 through June 30, 2011.

The examination included a review of the following:

- Company Operations and Management
- Producers/Agents
- Rates
- Underwriting
- Claims

The final examination report is a report written by exception. References to additional practices, procedures, or files that did not contain improprieties were omitted. Based on review of the above areas, the examiners prepared comment forms that were provided to Stewart. The comment forms set forth any concerns and/or discrepancies identified by the examiners during the course of the examination. The comment forms contained a section that permitted Stewart to submit a written response to each of the examiners’ comments.

For the period under examination, the examiners included statutory citations and regulatory references related to insurance laws in Colorado. Examination findings may result in administrative action by the Division. The examiners may not have discovered all unacceptable or non-complying practices of Stewart. Failure to identify specific Company practices does not constitute acceptance of such practices. This report should not be construed to either endorse or discredit any insurance company or insurance company product.

METHODOLOGY

The examiner reviewed Stewart’s business practices to determine compliance with Colorado insurance law, including but not limited to, the following exhibit:

Exhibit 1

Statute or Regulation	Subject
Section 10-1-128, C.R.S.	Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration.
Section 10-2-401, C.R.S.	License required.
Section 10-2-406, C.R.S.	Licensing of agencies.
Section 10-2-702, C.R.S.	Commissions.
Section 10-2-704, C.R.S.	Fiduciary responsibilities.
Section 10-3-1104, C.R.S.	Unfair methods of competition - unfair or deceptive acts or practices.
Section 10-11-102, C.R.S.	Definitions.
Section 10-11-103, C.R.S.	Compliance with article required.
Section 10-11-106, C.R.S.	Determination of insurability required.
Section 10-11-108, C.R.S.	Prohibitions.
Section 10-11-109, C.R.S.	Unearned premium reserve.
Section 10-11-110, C.R.S.	Amount of unearned premium reserve-release.
Section 10-11-111, C.R.S.	Reserve for unpaid losses and loss expense.
Section 10-11-116, C.R.S.	Title insurance agents licensed.
Section 10-11-118, C.R.S.	Title insurance-rules.
Section 10-11-119, C.R.S.	Laws applicable.
Section 10-11-121, C.R.S.	Application of article-other laws applicable.
Section 10-11-122, C.R.S.	Title commitments.
Section 10-11-123, C.R.S.	Notification of severed mineral estates.
Section 10-11-124, C.R.S.	Affiliated business arrangements – rules – investigative information shared with division of real estate.
Insurance Regulation 1-1-7	Market Conduct Record Retention
Insurance Regulation 1-1-8	Penalties and Timelines Concerning Division Inquiries and Document Requests
Insurance Regulation 3-5-1	Title Insurance
Insurance Regulation 6-4-1	Privacy of Consumer Financial and Health Information

Sampling Methodology

Where sampling was necessary, the examiners reviewed files randomly selected from the larger population of files. Otherwise, the examiners reviewed the entire population of files. Per statute, the examiners used the most recent version (2011) of the NAIC Handbook (“Handbook”) available at the commencement of the examination.

For this examination, the examiners reviewed a random sample of new business policy and claim files from unique populations.

When sampling was involved, an error tolerance level of seven percent (7%) for claims, and ten percent (10%) for other areas, was established, per the Handbook, to determine reportable exceptions.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero dollar (\$0) tolerance was applied to identify possible system errors.

Prior Audit and Examinations

Stewart has not been the subject of a financial examination by the Division. The Company has been subject to prior market conduct examinations covering the periods of January 1, 1997 through December 31, 1997 and July 1, 2003 through June 30, 2006.

Company Operations and Management

The examiners reviewed Stewart's management and administrative controls, agent oversight, the Certificate of Authority, record retention, disaster recovery, anti-fraud plan, underwriting guidelines, and timely cooperation with the examination process.

Producers/Agents

Stewart provided a listing of 105 title agents that were active during the examination period. The examiners reviewed the licensing and contracting of Stewart's agents in conjunction with their review of the Company's new business/underwriting.

Rates

Stewart provided copies of its rate filings applicable to policies written during the period July 1, 2010 through June 30, 2011. The examiners reviewed actual rates charged to Colorado residents, during the file review process, to determine compliance with Colorado insurance law.

Underwriting – New Business

The examiners selected a random sample of 116 policies from a total population of 46,808 new business policies written during the examination period. Stewart's new business/underwriting practices were reviewed for compliance with Colorado insurance law.

Claims Handling

The examiners selected a random sample of 105 files from a total population of 723 claims received during the examination period. Stewart's claims processing practices were reviewed for compliance with Colorado insurance law.

EXAMINATION REPORT SUMMARY

The examination resulted in a total of eight (8) findings in which Stewart was not in compliance with Colorado statutes and regulations. The following is a summary of the examiners' findings.

Company Operations and Management: The examiners identified one (1) area of concern during the review of Stewart's Company Operations and Management.

Issue A1: Failure to provide an anti-fraud statement as required by Colorado insurance law.

Producers/Agents: In the area of Producers/Agents, no compliance issues were identified that met the reporting threshold to be included in this report.

Rates: The examiners identified one (1) area of concern during the review of Stewart's Rates.

Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner.

Underwriting-New Business: The examiners identified six (6) areas of concern during the review of Stewart's Underwriting-New Business.

Issue G1: Failure, in some instances, to provide evidence that specific coverage exceptions had been disclosed.

Issue G2: Failure to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured.

Issue G3: Failure, in some instances, to provide evidence that the privacy disclosure had been provided.

Issue G4: Failure, in some instances, to provide evidence of an update of the title commitment, when the Company's agent provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance.

Issue G5: Failure, in some instances, to remit premiums within the required contractual time period.

Issue G6: Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date.

Claims Handling: In the area of Claims Handling, no compliance issues were identified that met the reporting threshold to be included in this report.

A copy of the Market Conduct Report if adopted pursuant to § 10-1-205(3)(a), C.R.S., can be obtained upon request from the Division.

Results of previous market conduct examination(s), if any, are available on the Division's website at www.dora.state.co.us/insurance or by contacting the Division.

STEWART TITLE GUARANTY COMPANY

FACTUAL FINDINGS

COMPANY OPERATIONS AND MANAGEMENT

Issue A1: Failure to provide an anti-fraud statement as required by Colorado insurance law.

Section 10-1-102, C.R.S., Definitions, states in part:

...

- (6)(a) “Company”, “corporation”, “insurance company”, or “insurance corporation” includes all corporations, associations, partnerships, or individuals engaged as insurers in the business of insurance, including the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange, or suretyship except fraternal or benevolent orders and societies.

...

- (12) “Insurance” means a contract whereby one, for consideration, undertakes to indemnify another or to pay a specified or ascertainable amount or benefit upon determinable risk contingencies, and includes annuities.
- (13) “Insurer” means every person engaged as principal, indemnitor, surety, or contractor in the business of making contracts of insurance.

Section 10-1-128, C.R.S., Fraudulent insurance acts – immunity for furnishing information relating to suspected insurance fraud – legislative declaration, states in part:

...

- (6)(a) Each insurance company *shall provide on all printed applications for insurance, or on all insurance policies, or on all claim forms provided and required by an insurance company*, or required by law, whether printed or electronically transmitted, a statement, in conspicuous nature, *permanently affixed to the application, insurance policy or claim form* substantially the same as the following: [Emphases added.]

“It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.”

The Company responded to the Division’s request for the location of the anti-fraud statement as required by § 10-1-128, C.R.S., that, “the anti-fraud statement as described in C.R.S. § 10-1-128 is located on Stewart’s acknowledgement of claim letter which goes out upon receipt of a claim.”

For the purposes of the current exam period under review, the Division has accepted placement of the anti-fraud statement on and permanently affixed to the claim acknowledgement letter. However, the

Division's position for future examinations is to require the anti-fraud statement be permanently affixed to the application, insurance policy, or claim form, as required by § 10-1-128, C.R.S. The Division will no longer accept placement of the anti-fraud statement on the claim acknowledgement letter after the date of the Commissioner's Final Agency Order arising out of this examination.

In forty-three (43) of 105 claim files, randomly selected from a total population of 723, Stewart was not in compliance with Colorado insurance law in that it did not utilize or provide an anti-fraud statement permanently affixed to its title insurance policy, application or claim form. All forty-three (43) exceptions were attributed to a processing error. In these instances, Stewart did not permanently affix an anti-fraud statement to its claims acknowledgement letter, as allowed in one prior exam.

Recommendation No. 1:

Stewart shall be provided a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-1-128, C.R.S. In the event Stewart is unable to provide such documentation, the Company may include, with its submission or rebuttal, its plan to comply, or evidence that it is now in compliance.

Otherwise, Stewart shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that all title insurance policies, applications or claim forms include the required verbiage regarding fraudulent acts and penalties, as required by Colorado insurance law.

<p><u>RATES</u></p>

Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner.
--

Section 10-11-118, C.R.S., Title insurance - rules, states in part:

- (1) Title insurance rates and fees shall be regulated in the manner provided in part 4 of article 4 of this title.
- (2) Prior to the effective date of any new or amended rate or fee, every title insurance company and title insurance agent shall file with the commissioner the new or amended rate or fee, with justification for the new or amended rate or fee. Each filing shall set forth its effective date, which shall be no earlier than thirty days after its receipt by the commissioner. The commissioner may promulgate rules to implement this subsection (2).
- (3) No title insurance company or title insurance agent shall use any rate or fee in the business of title insurance prior to its effective date, and no rate or fee increase or decrease shall apply to title policies or services that have been contracted for prior to such effective date. All rates or fees shall be readily available to the public in each office of the title insurance company or title insurance agent in the county to which said rates or fees apply.

Colorado Insurance Regulation 3-5-1, Title Insurance, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-3-1110, 10-4-404(1), 10-11-118, and 10-11-124(2), C.R.S., states in part:

...

Section 5. Rules Regarding Rates and Fees

...

- G. No rate or fee can be charged unless it is on the currently effective schedule at the time that the commitment and/or policy or closing and settlement service is contracted. Title insurance companies may not use different rates for different title insurance agents for the same risk in the same county.
- H. Schedules shall not apply to title commitments and/or policies or closing and settlement services contracted for prior to the effective date of such schedule.
- I. No title entity shall quote any rate or fee or closing and settlement service charge to any person which is more or less than that currently available to others for the same type of title policy or service in a like amount, covering property in the same county and involving the same factors as set forth in its then current schedule of rates and fees.

Section 6. Rules Regarding Standards of Conduct for Title Insurance Entities

...

- D. The following is a partial, but not all-inclusive, list of acts and practices which the Division considers per se unlawful inducements proscribed by § 10-11-108, C.R.S.:

...

9. Charging less than the scheduled rate or fee for a specified title or closing and settlement service, or for a policy of title insurance.

Section 7. Rules Regarding Consumer Protections

...

- M. *Each title entity shall exercise reasonable efforts to ensure that the acts of its employees and other authorized agents performed within the scope of the person's employment, contract, or agency agreement with the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]

In some instances, Stewart was not in compliance with Colorado insurance law in that twenty-nine (29) of 116 policy files, randomly selected from a total population of 46,808 policies, contained charges for policy and/or endorsement premiums that differed from the rates on file for these services.

Some files reviewed contained more than one rating error, however, each file was considered as a singular error regardless of the number of errors contained in the file.

Premium Rating

Population	Sample Size	Number of Exceptions	Total Error Rate
46,808	116	29	25%

The following chart contains a breakdown of the finding by coverage:

Type of Coverage	Number issued	Number of Exceptions	Files Over Charge	Files Under Charge	Total Amount Over	Total Amount Under	Percent of Sample
Owner's	50	7	2	5	\$74.50	\$3,505.50	14%
Lender's	96	11	6	5	\$874	\$670.50	12%
Endorsements	123	15	14	1	\$158	\$15	12%

Recommendation No. 2:

Stewart shall be provided a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of §10-11-118, C.R.S. and Colorado Insurance Regulation 3-5-1. In the event Stewart is unable to provide such documentation, the Company may include, with its submission or rebuttal, its plan to comply, or evidence that it is now in compliance.

Otherwise, Stewart shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that all title policy and endorsement charges are issued with premium determinations that are consistent with filed rates as required by Colorado insurance law.

<p><u>NEW BUSINESS</u></p>

Issue G1: Failure, in some instances, to provide evidence that specific coverage exceptions had been disclosed.

Colorado Insurance Regulation 3-5-1, Title Insurance, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-3-1110, 10-4-404(1), 10-11-118, and 10-11-124(2), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- B. Every title entity shall ensure that the title commitment, as may be amended or modified, fully discloses to all recipients of any title insurance commitment the impairments of record concerning the property to be insured, the extent of coverage proposed, *all proposed title exceptions*, and in a clear and conspicuous manner, shall show whether the title insurance commitment does or does not commit to insure over or delete those exceptions to title specified therein, consistent with § 10-11-106, C.R.S.

...

- D. *Every title entity shall ensure that, except for standard or preprinted exceptions, all proposed title exceptions on a title commitment for the issuance of an owners policy of title insurance shall make reference to the recording information of the document to be excepted from coverage.* In the case of unrecorded yet known impairments, the title entity may use other identifiable marks on the document, such as date, names of parties, case numbers, etc. Title entities shall not make use of generic exceptions unless there is receipt of written instructions signed by the proposed insured authorizing the use of such exceptions or a request from the proposed insured for a specific policy form has been made which makes use of such exceptions.

...

- M. *Each title entity shall exercise reasonable efforts to ensure that the acts of its employees and other authorized agents performed within the scope of the person's employment, contract, or agency agreement with the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.*
- N. *Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10 of the Colorado Revised Statutes for a period of not less than seven (7) years, except as otherwise permitted by law. [Emphases added.]*

The examiner selected a random sample of 116 policy files, which included both sale and refinance transactions. Of those, fifty (50) files contained owner's policies. Additionally, forty-four (44) of those fifty (50) owner's policies were subject to the specific coverage exceptions requirement.

In some instances, Stewart was not in compliance with Colorado insurance law in that eight (8) of the forty-four (44) owner's policy files that required specific coverage exceptions, did not contain evidence that the specific coverage exceptions had been disclosed.

Specific Exceptions

Population	Sample Size	Owner's Policies	Owner's Policies Requiring Specific Exceptions	Number of Exceptions	Total Error Rate
46,808	116	50	44	8	18%

Recommendation No. 3:

Stewart shall be provided a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of Colorado Insurance Regulation 3-5-1. In the event Stewart is unable to provide such documentation, the Company may include, with its submission or rebuttal, its plan to comply or evidence that it is already in compliance.

Otherwise, Stewart shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that specific coverage exceptions are disclosed with each title commitment issued for an owner's title insurance policy, when it is determined specific coverage exceptions are required, as required by Colorado insurance law.

Issue G2: Failure to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured.
--

Section 10-11-122, C.R.S., Title commitments, states in part:

...

- (3) Before issuing any title insurance policy, unless the proposed insured provides written instructions to the contrary, a title insurance agent or title insurance company shall obtain a certificate of taxes due or other equivalent documentation from the county treasurer or the county treasurer's authorized agent.

Colorado Insurance Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of § 10-1-109(1), C.R.S., states in part:

...

Section 4. Records Required For Market Conduct Purposes

- A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claim's practices, rating, underwriting.
- B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all the work papers and written communications in the producer's possession pertaining to the documented policy.

Colorado Insurance Regulation 3-5-1, Title Insurance, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-3-1110, 10-4-404(1), 10-11-118, and 10-11-124(2), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- M. *Each title entity shall exercise reasonable efforts to ensure that the acts of its employees and other authorized agents performed within the scope of the person's employment, contract, or agency agreement with the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.*
- N. *Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10 of the Colorado Revised Statutes for a period of not less than seven (7) years, except as otherwise permitted by law. [Emphases added.]*

In some instances, Stewart was not in compliance with Colorado insurance law in that thirty (30) of 116 policy files, randomly selected from a total population of 46,808 policies, did not contain evidence of a certificate of taxes due, or written instructions from the proposed insured eliminating such requirement, had been obtained prior to issuing the title policy.

Tax Certificate

Population	Sample Size	Number of Exceptions	Total Error Rate
46,808	116	30	26%

Recommendation No. 4:

Stewart shall be provided a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-11-122, C.R.S. and Colorado Insurance Regulations 1-1-7 and 3-5-1. In the event Stewart is unable to provide such documentation, the Company may include, with its submission or rebuttal, its plan to comply, or evidence that it is now in compliance.

Otherwise, Stewart shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that a that a certificate of taxes due, or instructions eliminating the requirement, is obtained and retained prior to the issuance of the title policy, as required by Colorado insurance law.

Issue G3: Failure, in some instances, to provide evidence that the privacy disclosure had been provided.

Colorado Insurance Regulation 3-5-1, Title Insurance, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-3-1110, 10-4-404(1), 10-11-118, and 10-11-124(2), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

M. *Each title entity shall exercise reasonable efforts to ensure that the acts of its authorized agents performed within the scope of the person's employment by the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.*
[Emphasis added.]

N. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10, parts 4 and 11, for a period of not less than seven (7) years, except as otherwise permitted by law.

Colorado Insurance Regulation 6-4-1, promulgated under the authority of §§ 10-1-108, 10-1-109, 10-5-117, 10-16-109 and 10-16-401(4)(o), C.R.S., states in part:

...

Section 4. Definitions

...

B. (1) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

...

Q. (1) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of Colorado.

Section 5. Initial Privacy Notice to Consumers Required

A. Initial notice requirement. *A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:*

(1) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and

- (2) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any non affiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

In some instances, Stewart was not in compliance with Colorado insurance law in that fifteen (15) of 116 policy files, randomly selected from a total population of 46,808 policies, did not contain evidence of a privacy disclosure.

Privacy Disclosure

Population	Sample Size	Number of Exceptions	Total Error Rate
46,808	116	15	13%

Recommendation No. 5:

Stewart shall be provided a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of Colorado Insurance Regulations 3-5-1 and 6-4-1. In the event Stewart is unable to provide such documentation, the Company may include, with it submission or rebuttal, its plan to comply, or evidence that it is now in compliance.

Otherwise, Stewart shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure that the privacy disclosure is provided as required by Colorado insurance law.

Issue G4: Failure, in some instances, to provide evidence of an update of the title commitment, when the Company's agent provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance.

Colorado Insurance Regulation 3-5-1, Title Insurance, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-3-1110, 10-4-404(1), 10-11-118, and 10-11-124(2), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

E. *Whenever a title entity provides the closing and settlement service that is in conjunction with the issuance of an owners policy of title insurance, it shall update the title insurance commitment from the date of issuance to as reasonably close to the time of closing as permitted by the applicable county real estate records. Such update shall include all impairments of record at the time of closing or as close thereto as permitted by the applicable county real estate records. The title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title insurance commitment, other than the effective date of the title insurance commitment, for all undisclosed matters that appear of record prior to the time of closing.*

...

M. *Each title entity shall exercise reasonable efforts to ensure that the acts of its employees and other authorized agents performed within the scope of the person's employment, contract, or agency agreement with the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance. [Emphasis added.]*

N. *Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10 of the Colorado Revised Statutes for a period of not less than seven (7) years, except as otherwise permitted by law. [Emphasis added.]*

The examiners selected a random sample of 116 policy files from a population of 46,808 title policies written during the examination period. Closing and settlement services, in conjunction with the issuance of an owner's policy, were provided by the Company's agents in forty-four (44) files in the sample.

In some instances, Stewart was not in compliance with Colorado insurance law in that ten (10) of the forty-four (44) policy files, where the Company's agent provided closing and settlement services in conjunction with the issuance of an owner's policy, did not contain evidence of an update of the title commitment.

Title Commitment Update

Population	Sample Size	Owner's Policy Closed by Agent	Number of Exceptions	Total Error Rate
46,808	116	44	10	23%

Recommendation No. 6:

Stewart shall be provided a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of Colorado Insurance Regulation 3-5-1. In the event Stewart is unable to provide such documentation, the Company may include, with its submission or rebuttal, its plan to comply, or evidence that it is now in compliance.

Otherwise, Stewart shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure evidence of an update to the commitment, where the Company's agent provided closing and settlement services in conjunction with the issuance of an owner's policy of title insurance, as required by Colorado insurance law.

Issue G5: Failure, in some instances, to remit premiums within the required contractual time period.

Section 10-2-704, C.R.S., Fiduciary responsibilities, states in part:

- (1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
- (b) All premiums received, less commissions if authorized, *shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.* [Emphasis added.]
- ...
- (d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, the insurer or its agent shall promptly report such failure to the commissioner in writing.

Colorado Insurance Regulation 3-5-1, Title Insurance, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-3-1110, 10-4-404(1), 10-11-118, and 10-11-124(2), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- M. *Each title entity shall exercise reasonable efforts to ensure that the acts of its employees and other authorized agents performed within the scope of the person's employment, contract, or agency agreement with the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphasis added.]

In some instances, Stewart was not in compliance with Colorado insurance law, as the premium was not remitted within the required contractual due date for eighty-seven (87) of 116 policy files, randomly selected from a total population of 46,808 policies.

Premium Remittance

Population	Sample Size	Number of Exceptions	Total Error Rate
46,808	116	87	75%

Recommendation No. 7:

Stewart shall be provided a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-2-704, C.R.S. and Colorado Insurance Regulation 3-5-1. In the event Stewart is unable to provide such documentation, the Company may include, with its submission or rebuttal, its plan to comply or evidence that it is now in compliance.

Otherwise, Stewart shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure timely remittance of premium, as required by Colorado insurance law.

Issue G6: Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date.

Section 10-2-704, C.R.S., Fiduciary responsibilities, states in part:

- (1)(a) All premiums belonging to insurers and all unearned premiums belonging to insureds received by an insurance producer licensee under this article shall be treated by such insurance producer in a fiduciary capacity. The commissioner may promulgate such rules as are necessary and proper relating to the treatment of such premiums.
- (b) All premiums received, less commissions if authorized, *shall be remitted to the insurer or its agent entitled thereto on or before the contractual due date or, if there is no contractual due date, within forty-five days after receipt.*
- ...
- (d) If any insurance producer has failed to account for any collected premium to the insurer to whom it is owing or to its agent entitled thereto for more than forty-five days after the contractual due date or, if there is no contractual due date, more than ninety days after receipt, *the insurer or its agent shall promptly report such failure to the commissioner in writing.* [Emphases added.]

Colorado Insurance Regulation 3-5-1, Title Insurance, promulgated under the authority of §§ 10-1-109, 10-2-104, 10-3-1110, 10-4-404(1), 10-11-118, and 10-11-124(2), C.R.S., states in part:

...

Section 7. Rules Regarding Consumer Protections

...

- M. *Each title entity shall exercise reasonable efforts to ensure that the acts of its employees and other authorized agents performed within the scope of the person's employment, contract, or agency agreement with the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.* [Emphases added.]

In some instances, Stewart was not in compliance with Colorado insurance law as the Company failed to report to the Commissioner in writing, thirty-four (34) cases in which the premium remittance exceeded forty-five (45) days after the contractual due date.

No evidence or documentation was located or provided, which would have demonstrated the failure to remit premium timely was reported to the commissioner in writing, as required by Colorado insurance law.

Premium Remittance Reporting

Population	Sample Size	Late Premium Remittances	Number of Exceptions	Total Error Rate
46,808	116	87	34	39%

Recommendation No. 8:

Stewart shall be provided a reasonable period, not exceeding thirty (30) days from the date of this report, to make written submission or rebuttal as to why it should not be considered in violation of § 10-2-704, C.R.S. and Colorado Insurance Regulation 3-5-1. In the event Stewart is unable to provide such documentation, the Company may include, with its submission or rebuttal, its plan to comply, or evidence that it is now in compliance.

Otherwise, Stewart shall be required, within thirty (30) days from the date this report is adopted, to provide written evidence to the Division that it has revised its processes and fully implemented procedures to ensure any remittance of premium that exceeds forty-five (45) days from the contractual due date is promptly reported to the Commissioner, as required by Colorado insurance law

SUMMARY OF ISSUES AND RECOMMENDATIONS	Rec. No.	Page No.
COMPANY OPERATIONS AND MANAGEMENT		
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RATES		
Issue F1: Failure, in some instances, to charge rates in accordance with the rates on file with the Commissioner.	2	16
NEW BUSINESS		
Issue G1: Failure, in some instances, to provide evidence that specific coverage exceptions had been disclosed.	3	19
Issue G2: Failure to obtain a certificate of taxes due or written instructions eliminating the requirement from the proposed insured.	4	21
Issue G3: Failure, in some instances, to provide evidence that the privacy disclosure had been provided.	5	23
Issue G4: Failure, in some instances, to provide evidence of an update of the title commitment, when the Company's agent provided closing and settlement services, in conjunction with the issuance of an owner's policy of title insurance.	6	25
Issue G5: Failure, in some instances, to remit premiums within the required contractual time period.	7	27
Issue G6: Failure, in some instances, to report to the Commissioner any remittance that exceeded forty-five (45) days beyond the contractual due date.	8	29

Examination Report Submission

State Market Conduct Examiners

Christine M. Nelson

And

Jeffory A. Olson, CIE, MCM, FLMI, AIRC, ALHC

Submit this report to:

**The Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, Colorado 80202**